

REMARKS

Claims 1-46 are pending.

In the specification at paragraph [42] of the present application, states the following:

An FPDU may be a unit of data created by a ULP using a marker-based ULDPDU aligned (MPA) framing protocol. Examples of MPA framing protocols may be found in, for example, United States Patent Application Serial No. 10/230,643, entitled "System and Method for Identifying Upper Layer Protocol Message Boundaries" and filed on August 29, 2002. The above-referenced United States patent application is hereby incorporated herein by reference in its entirety.

See specification at paragraph [42] of the present application.

Since previously co-pending U.S. Application No. 10/230,643 has been incorporated by reference in the present application and since previously co-pending U.S. Application No. 10/230,643 has the same inventor as the present application, Applicant has amended the present application, thereby making the present application a CONTINUATION-IN-PART of said previously co-pending U.S. Application No. 10/230,643, now issued U.S. Patent No. 7,295,555 B2.

Claims 1-13, 16-25, 29-31, 45 and 46 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the document entitled "Marker PDU Aligned Framing for TCP Sepcification" ("Culley"). Applicant respectfully traverse the rejection as set forth below.

Culley has an alleged date of September 2002 listed on the first page of the document.

However, said previously co-pending U.S. Application No. 10/230,643, now issued U.S. Patent No. 7,295,555 B2, has an actual filing date of August 29, 2002.

Thus, the present application antedates Culley.

The citations to Culley relate to the alleged disclosures on pages 3 and 4 of Culley. The alleged disclosures on pages 3 and 4 in Culley are antedated by said previously co-pending U.S. Application No. 10/230,643, now issued U.S. Patent No. 7,295,555 B2, has an actual filing date of August 29, 2002.

For example, just as Culley allegedly does in enumerated section 3 on page 4 of Culley, said

U.S. Application No. 10/230,643 also shows pre-pending a header, inserting markers and appending a CRC after the ULDPDU and PAD. See, e.g., FIGS. 4-7 of said U.S. Application No. 10/230,643, now issued U.S. Patent No. 7,295,555 B2.

Other citations to Culley at pages 3 and 4, as alleged, can also be antedated in, for example, FIGS. 4-10 and the accompanying descriptions of FIGS. 4-10 of said U.S. Application No. 10/230,643, now issued U.S. Patent No. 7,295,555 B2.

For at least the above reasons, it is respectfully submitted the anticipation rejection based on Culley cannot be maintained.

It is therefore respectfully requested that the anticipation rejection based on Culley be withdrawn.

The remaining claims stand rejected under 35 U.S.C. § 103(a) based on a combination of Culley and U.S. Patent No. 7,124,198 ("Pinkerton"). In view of the arguments made above with respect to Culley, it is respectfully submitted that the obviousness rejection based, at least in part, on Culley cannot be maintained.

It is therefore respectfully requested that the obviousness rejection based on the combination of Culley and Pinkerton, as alleged, be withdrawn.

Applicant does not necessarily agree or disagree with the Examiner's characterization of the documents made of record, either alone or in combination, or the Examiner's characterization of recited claim elements. Furthermore, Applicant respectfully reserves the right to argue the characterization of the documents of record, either alone or in combination, to argue what is allegedly well known, allegedly obvious or allegedly disclosed, or the characterization of the recited claim elements should that need arise in the future.

Applicant respectfully reserves the right to pursue, without prejudice, subject matter that has been withdrawn, amended and/or cancelled in a continuing and/or related application.

With respect to the present application, Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor or related application. The

U.S. Application No. 10/751,732, filed January 2, 2004

Attorney Docket No. 14230US03

Amendment dated March 13, 2009

In Response to Office Action mailed November 13, 2008

Examiner is advised that any previous disclaimer of claim scope, if any, and the alleged prior art that it was made to allegedly avoid, may need to be revisited. Nor should a disclaimer of claim scope, if any, in the present application be read back into any predecessor or related application.

In view of at least the foregoing, it is respectfully submitted that the present application is in condition for allowance. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, to charge any fee deficiencies or to credit any overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: March 13, 2009

Respectfully submitted,

/Michael T. Cruz/

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